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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

STARDOCK SYSTEMS, INC.,

Plaintiff,

vs.

PAUL REICHE III and ROBERT  
FREDERICK FORD,

Defendants.

AND RELATED COUNTERCLAIM

Case No.: 4:17-cv-07025-SBA

**STARDOCK SYSTEMS, INC.'S RESPONSE  
AND OBJECTIONS TO DEFENDANTS'  
POST-REPLY SUBMISSIONS**

Judge: Hon. Sandra B. Armstrong

Complaint Filed: Dec. 8, 2017  
Trial Date: June 24, 2019

**STARDOCK SYSTEMS, INC.'S RESPONSE AND OBJECTIONS TO  
DEFENDANTS' POST-REPLY SUBMISSIONS**

Case No. 17-cv-07025-SBA

1 Stardock Systems, Inc. (“Stardock”) respectfully submits this brief response to the  
 2 following documents filed without Court approval on September 24, 2018 by Defendants Paul  
 3 Reiche III and Robert Frederick Ford in response to Stardock’s reply: (1) Reiche’s and Ford’s  
 4 Opposition to Defendants’ [sic] Evidentiary Objections to the Declaration of Paul Reiche III in  
 5 Support of Stardock’s Motion for Temporary Restraining Order and Order to Show Cause Why  
 6 Preliminary Injunction Should Not Be Granted; (2) Objections and Motion to Strike the Second  
 7 Declaration of Robert A. Weikert in Support of Stardock’s Motion or, In the Alternative Request  
 8 for Leave to File Sur-Reply; (3) Reiche’s and Ford’s Evidentiary Objections to the Declaration of  
 9 David L. May in Support of Stardock’s *Ex Parte* Motion for Temporary Restraining Order and  
 10 Order to Show Cause Why Preliminary Injunction Should Not Be Granted; and (4) Reiche’s and  
 11 Ford’s Evidentiary Objections and Motion to Strike the Second Declaration of Bradley R.  
 12 Wardell in Support of Stardock’s Motion or, in the Alternative, Request for Leave to File Sur-  
 13 Reply.

14 ***1. Post-Reply Filings Are Limited by the Local Rules.***

15 Local Rule 7-3(d) provides as follows:

16 **(d) Supplementary Material.** Once a reply is filed, no additional  
 17 memoranda, papers or letters may be filed without prior Court approval,  
 18 except as follows:

19 1. **(1) Objection to Reply Evidence.** If new evidence has been  
 20 submitted in the reply, the opposing party may file within 7 days after the  
 21 reply is filed, and serve an Objection to Reply Evidence, which may not  
 22 exceed 5 pages of text, stating its objections to the new evidence, which  
may not include further argument on the motion. The Objection to Reply  
 Evidence must be filed and served not more than 7 days after the reply  
 was filed. Fed. R. Civ. P. 6(d), which extends deadlines that are tied to  
 service (as opposed to filing), does not apply and thus does not extend this  
 deadline. (Emphasis added.)

23 As discussed below, Defendants’ filings go well beyond what is permitted by Local Rule 7-3(d)  
 24 and again were filed without prior Court approval (which the Rule requires).

1           **2. *Reiche's and Ford's Opposition to Defendants' [sic] Evidentiary Objections to the***  
 2           ***Declaration of Paul Reiche III in Support of Stardock's Motion for Temporary***  
 3           ***Restraining Order and Order to Show Cause Why Preliminary Injunction Is***  
 4           ***Improper and Should Be Disregarded.***

5           Local Rule 7-3(d) does not allow for the filing of an opposition to evidentiary objections  
 6 in connection with declarations submitted with reply papers without prior Court approval. Thus,  
 7 Reiche's and Ford's Opposition to Defendants' [sic] Evidentiary Objections to the Declaration of  
 8 Paul Reiche III in Support of Stardock's Motion for Temporary Restraining Order and Order to  
 9 Show Cause Why Preliminary Injunction Should Not Be Granted violates the Court's Local Rule.  
 10 It is also 32 pages long, again in violation of the Local Rules. This submission is improper on its  
 11 face and should be stricken and disregarded.

12           **3. *Reiche's and Ford's Objections and Motion to Strike the Second Declaration of***  
 13           ***Robert A. Weikert in Support of Stardock's Motion or, In the Alternative Request***  
 14           ***for Leave to File Sur-Reply is Likewise Improper and Should Be Disregarded.***

15           Unless prior Court approval has been obtained, Local Rule 7-3(d) only allows for the  
 16 submission of a limited "Objection to Reply Evidence" with respect to allegedly new evidence  
 17 submitted in the reply, not to exceed five (5) pages of text and not to include further argument on  
 18 the motion. Defendants' "Objections and Motion to Strike the Second Declaration of Robert A.  
 19 Weikert in Support of Stardock's Motion or, In the Alternative Request for Leave to File Sur-  
 20 Reply" goes far beyond what is permitted and thus should also be stricken and disregarded.

21           First, it contains a motion to strike material attached to the Second Weikert Declaration  
 22 that was not approved by the Court, and by way of that improper motion, impermissible further  
 23 argument on the motion.

24           Second, the exhibits attached to the Second Weikert Declaration were submitted in direct  
 25 response to legal arguments advanced by Defendants in their opposition to Stardock's preliminary  
 26 injunction motion and thus do not constitute improper new evidence. A moving party may  
 27 respond with evidence and argument that responds to the arguments made in opposition to the  
 28 motion. *See, e.g., Living on the Edge, LLC v. Lee*, 2015 U.S. Dist. LEXIS192532 (C.D. Cal. Aug.

25, 2015) (objection to exhibits submitted on reply overruled where exhibits were submitted to rebut arguments raised in opposition to the motion); *Classical Silk, Inc. v. Dolan Grp., Inc.*, 2016 U.D. Dist. LEXIS 190581, \*8 n.4 (C.D. Cal. Feb. 2, 2016) (citing *Edwards v. Toys “R” Us*, 527 F. Supp. 1197, 1205 n.31 (C.D. Cal. 2007) (“[e]vidence is not ‘new,’ . . . if it is submitted in direct response to proof adduced in opposition to a motion.”)). Finally, and in light of the foregoing, there is no basis whatsoever for allowing Defendants to file what in effect would be an additional improper sur-reply.

***4. Reiche’s and Ford’s Evidentiary Objections to the Declaration of David L. May in Support of Stardock’s Ex Parte Motion for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Be Granted.***

As already noted, Local Rule 7-3(d) permits objections to reply evidence only if it allegedly constitutes new evidence. The Rule does not permit evidentiary objections on any other basis. Defendants’ “Evidentiary Objections to the Declaration of David L. May in Support of Stardock’s Ex Parte Motion for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Be Granted” are *not* based on allegations that the evidence contained therein is new. Indeed, they purport to provide the Court with a primer on the Federal Rules of Evidence (“FRE”) and then interpose impermissible FRE objections to various statements in the declaration. Finally, the submission also exceeds the Rule’s page limitations.

***5. Reiche’s and Ford’s Evidentiary Objections and Motion to Strike the Second Declaration of Bradley R. Wardell in Support of Stardock’s Motion or, in the Alternative, Request for Leave to File Sur-Reply is Improper and Should Be Disregarded.***

Defendants’ evidentiary objections and motion to strike the Second Wardell Declaration are improper for the same reasons stated above with respect to the evidentiary objections and motion to strike the Second Weikert Declaration, and thus should be stricken and disregarded. The material submitted with the Second Wardell Declaration was in direct response to arguments and evidence raised in the opposition papers, and thus does not constitute improper new evidence. As Mr. Wardell explained in his Second Declaration in response to Defendants’

1 assertion that Stardock would still be able to sell *Origins* on its own website even if the DMCA  
 2 notices resulted in Steam and GOG removing the game from their respective platforms, the Steam  
 3 and GOG platforms provide the infrastructure for the *Origins* game no matter who sells the Steam  
 4 or GOG keys. Thus, the game is dependent on these platforms and must be played on them. *See*,  
 5 *e.g.*, *Living on the Edge, LLC v. Lee*, 2015 U.S. Dist. LEXIS192532 (C.D. Cal. Aug. 25, 2015)  
 6 (objection to exhibits submitted on reply overruled where exhibits were submitted to rebut  
 7 arguments raised in opposition to the motion); *Classical Silk, Inc. v. Dolan Grp., Inc.*, 2016 U.D.  
 8 Dist. LEXIS 190581, \*8 n.4 (C.D. Cal. Feb. 2, 2016) (*citing Edwards v. Toys “R” Us*, 527  
 9 F.Supp.1197, 1205 n.31 (C.D. Cal. 2007) (“[e]vidence is not ‘new,’ . . . if it is submitted in direct  
 10 response to proof adduced in opposition to a motion.”)).

11 In sum, the motions to strike, the evidentiary objections, the de facto sur-replies, and the  
 12 requests to submit an additional sur-reply, all violate the Local Rules and should be stricken and  
 13 disregarded.

14 Dated: September 25, 2018

Respectfully submitted,

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By: /s/ Robert A. Weikert

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